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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF MARYLAND,

Petitioner,

v.

HAROLD GARRISON,

Respondent.

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE LEGAL FOUNDATION OF AMERICA, AND THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., IN SUPPORT OF THE PETITIONER

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Deborah K. Chasanow, Assistant Maryland Attorney General, Chief, Crimi-

nal Appeals, Counsel for Petitioner, and Gerald A. Kroop, Esq., Counsel for Respondent. Letters of Consent of both parties have been filed with the Clerk of this Court.

INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* seventy times in the Supreme Court of the United States, and thirty-six times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The Legal Foundation of America (LFA), is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

Amici are professional associations representing the interests of law enforcement agencies at the state and local level. Our members include (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of obtaining and executing arrest and search warrants; and (2) prosecutors, county counsel and police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such warrants, and to prosecute cases involving evidence obtained thereby.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of rulings such as that of the court below, *Garrison v. State*, 303 Md. 385, 494 A.2d 193 (1985), and we wish to impart that knowledge to this Court. We respectfully ask this Court to consider this information in reaching its decision in this case.

ARGUMENT

I.

THE FOURTH AMENDMENT EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE SEIZED FROM DEFENDANT'S SEPARATELY LEASED THIRD FLOOR APARTMENT, DURING EXECUTION OF A VALID SEARCH WARRANT FOR ANOTHER PERSON'S APARTMENT LOCATED ON THE SAME FLOOR OF THE APARTMENT BUILDING, WHEN THE POLICE, IN APPLYING FOR AND EXECUTING THE WARRANT, REASONABLY BELIEVED THAT THERE WAS ONLY ONE THIRD FLOOR APARTMENT.

Americans for Effective Law Enforcement has been privileged to file many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *National District Attorneys Association,* the *International Association of Chiefs of Police,* various other associations of chiefs of police and sheriffs, and the *Legal Foundation of America.* Those briefs have often presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, we will not undertake an extended analysis of the case law, but will confine our brief to the law enforcement impact of the issues raised by this case.

This case is typical of a factual scenario frequently encountered by police officers in large urban areas. An officer of the Baltimore City Police Department applied for a warrant to search the dwelling of one Lawrence Meril McWebb. The officer stated in the affidavit that he had met with a "proven Confidential Reliable Informant" who told him that McWebb was selling marijuana out of his third floor apartment at 2036 Park Avenue, in Baltimore, Maryland. The officer further stated in the affidavit in application for the search warrant that he verified McWebb's address:

> Upon receiving the above information from the proven confidential reliable informant your Affiant Detective Marcus went to the premises known as 2036 Park Avenue and found it exactly as the Informant had described as a three story brick dwelling with the numerials [sic] 2-0-3-6 affixed to the front of the premises. Further your Affiant made a check with the Baltimore Gas and Electric Company and discovered that the premises of 2036 Park Avenue third floor was in the name of Lawrence McWebb. Your Affiant Marcus then checked with the Baltimore Police Department and discovered that there was a subject by the name of Lawrence Merial [sic] McWebb, black male date of birth 12/20/31 with an address of 2036 Park Avenue third floor who had been arrested in the past with a B. of I. number of 108-147. According to arrest records the subject McWebb is described as being a black male 5'11" tall weighing 150 pounds. This was exactly as described by Informant.

Affidavit for search warrant as quoted at 494 A.2d at 193-194.

When the officer applied for the search warrant, he believed in objective good faith that only one apartment occupied the entire third floor of the apartment building. The warrant that was issued by the magistrate authorized a search for marijuana and related materials "on the person" and "on the premises" of "Lawrence Meril McWebb," at "2036 Park Avenue third floor apartment described as being a three story brick dwelling with the numerals 2-0-3-6 affixed to the front of same."

Armed with this search warrant, several Baltimore police officers, including the officer who was the affiant and applicant, searched the entire third floor of 2036 Park Avenue, believing in objective good faith that they were searching the apartment of the person named in the affidavit and warrant. As a result of the search, the officers seized evidence from two separate but indistinguishable (to them) apartments on the third floor, McWebb's and the defendant's. The Court below suppressed the evidence seized from the defendant's apartment, ruling that

the police had no justification under the Fourth Amendment to search defendant's apartment, "regardless of appearances," 494 A.2d at 197, which to the officers made the separate apartments indistinguishable, and additionally refused to apply a good faith exception to the actions of the police officers, 494 A.2d at 197-198.

Counsel for *amici,* in their close association with the police, as noted above (and the former service of some of them as police legal advisors), know the great lengths to which narcotics dealers frequently go to confuse and confound the police in searching for evidence. For example, apartment door numbers are often altered, removed, and even replaced with other doors. It is not uncommon to find more than one apartment with the same number. This is done deliberately by narcotics dealers so that the police will not know which apartment is the correct one according to their arrest or search warrant.

Narcotics dealers and their legal counsel know that they have a better chance of attacking a warrant under the particularity requirement of the Fourth Amendment if the evidence shows there were two or more "Apartment No. 3" doors in their building. If the police go to the right apartment, the occupant's attorney will assert that the description by apartment number was not sufficient because more than one apartment bore that number, or his unit bore no number. Similarly, if police in good faith erroneously enter the wrong apartment (or a portion thereof), that entry will also be attacked as illegal and the evidence declared unlawfully seized.

The present case is similar to *Hill v. California,* 401 U.S. 797, 91 S.Ct. 1106 (1971). In *Hill,* the police had probable cause to arrest a robbery suspect and mistakenly arrested another person in the suspect's apartment. A search of that person, incident to his arrest, revealed criminal evidence. The Court upheld that search as reasonable and valid under the Fourth Amendment. The Court stated:

> . . . [the] police were entitled to do what the law would have allowed them to do if Miller had in fact been Hill, that is, to search incident to arrest and to seize evidence of the crime the police had probable cause to believe Hill had committed. [Their conduct was appropriate when] judged in accordance with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act."

401 U.S. at 804-5, 91 S.Ct. at 1111 (quoting from *Brinegar v. United States,* 338 U.S. 160, 175, 69 S.Ct. 1302, 1310 (1949)).

Amici are well aware that the "factual and practical considerations of everyday life" of narcotics dealers differ from those surrounding the lives of the law-abiding community. Residents of suburban Chevy Chase or Arlington, Virginia, do not ordinarily attempt to confuse visitors and delivery personnel by removing, defacing, altering or switching apartment numbers or doors. Yet such evasive and obfuscating conduct is a frequent tool in the *modus operandi* of narcotics peddlers, if not to escape detection, then to later challenge the legal sufficiency of the search warrant affidavit.

Although this case does not involve a switching of doors or apartment numbers, the confusion nevertheless resulted from their apparent absence. The officers could not tell, as they entered to search, that there were two separate apartments on the third floor of the apartment building. **Should the law confer special protections for those who fail to number their door or deceive police with false, duplicate or altered numbers?**

Amici respectfully submit that this Court should also be mindful of the behavioral differences between drug *abusers* and drug *dealers.* An *abuser* may be a resident of a respectable neighborhood, whereas a *dealer* frequently operates from a large home in a blighted urban neighborhood. Frequently such

places have been converted into many different units, and rearranged without design but rather for the convenience of the persons dwelling therein. Conscientious police officers can lawfully obtain the floor plans of newly constructed apartment buildings, but they cannot hope to find such plans in a municipal building department in the case of partitioned homes that, too often, have been divided by caprice, and without approval of building inspectors or zoning officials. *Amici* know from our experience and the experience of our members, that the latter are often the business places of inner-city drug peddlers.

The decision below is an invitation to such drug dealers to further misnumber, renumber or unnumber their places of business. This Court should not compound the confusion by conferring a sanctuary status on such premises. Rather, we urge the Court to apply the standard announced in *Hill v. California, supra.* The officers in *Hill* mistakenly and in good faith searched Miller, believing him to be Hill. In the present case, the police officers mistakenly and in good faith searched one part of the third floor, thinking that it belonged to the target of their investigation. Police officers, police legal advisors, and prosecutors will be hard-pressed to distinguish between those mistakes, and why one is excusable and the other is not.

Amici further submit that the evidence obtained by the police officers in this case is admissible under the good faith exception to the exclusionary rule adopted by this Court in *Massachusetts v. Sheppard,* 468 U.S. ____, 104 S.Ct. 3424 (1984). Other courts have recognized a good faith or innocent mistake exception to the particularity requirement, especially when officers were unaware of multiple occupancy of the premises. The leading case, *United States v. Santore,* 290 F.2d 51 (2nd Cir. 1960) noted that:

> The agents were not warned of a possible dual occupancy of the house until after they had shown a copy of the warrant to Orlando and had entered inside. At that

> moment, it was too late for them, consistent with the success of their mission, to have retreated and obtained a new warrant.

290 F.2d at 67.

The *Santore* principle has been followed and applied by many state courts (see LaFave, 2 Search and Seizure 79, § 4.5, fn. 37; Annotation, *Search Warrant: Sufficiency of Description of Apartment or Room to be Searched in Multiple-Occupancy Structure,* 11 A.L.R.3d 1330) and the Eighth Circuit in *United States v. Davis,* 557 F.2d 1239 at 1247-50 (8th Cir. 1977). See also, *Houser v. Geary,* 465 F.2d 193 (9th Cir. 1972); *United States v. Jordan,* 349 F.2d 107 (6th Cir. 1965); *Owens v. Scafati,* 273 F.Supp. 428 (D. Mass. 1967).

CONCLUSION

Amici respectfully request this Court to recognize the realities of narcotics law enforcement and their impact upon search warrants obtained and executed under the Fourth Amendment in good faith. We urge that the decision of the court below should be reversed on the basis of law and sound judicial policy.

Respectfully submitted,

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